IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1021 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PREHLADBHAISPATEL - Applicant(s)

Versus

SHANKERLALPPANDYA - Respondent(s)

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Appearance :
MR NITIN M AMIN for Applicant(s) : 1,
None for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/10/2005

ORAL JUDGMENT

1.The petitioner/original accused has filed this petition under Sec. 482 of the Criminal Procedure Code praying for quashing and setting aside the process issued by the learned Judicial Magistrate, First Class, Lunavada in

Criminal Case No. 1035/89 for offences under Sections 406 and 420 of the Indian Penal Code on 24.12.89

2.This court has issued the rule on 26.04.90 and ad-interim stay of further proceedings was granted.

3.It is the case of the petitioner that the respondent no.1/original complainant has filed a private complaint in the court of learned Judicial Magistrate, First Class, Lunavada against the petitioner for offences under Sections 406 and 420 of the Indian Penal Code. The said complaint has been registered as Crime Case no. 1035/90. The complainant alleged in the said complaint that the petitioner asked the complainant to produce the crop of Bajara and during the month of May and June 1989, the petitioner took Bajara seed and at that time it was promised that the amount would be paid within one month. The petitioner also paid in all 2 to 3 installments of the amount due of the said goods. However, after that as the petitioner did not pay the amount the complainant filed a private complaint which was sent under Section 156(3) of the Criminal Procedure Code by the learned Magistrate for inquiry. However, during the inquiry the petitioner gave a cheque of Rs. 4595/- dated 10.12.89 drawn on Ahmedabad District Cooperative Bank, Relief Road

Branch and the petitioner also assured the complainant that the cheque would be honoured and he would receive his amount. The complainant, therefore, asked the police to withdraw the complaint.

4.It is further alleged in the complaint that the said cheque was dishonoured because of the reason of the stopping of payment and the same was intimated to the complainant by the bank on 28.12.89. The complainant, therefore, filed a second complaint for the offences under Sections 406 and 420 of the Indian Penal Code on 29.12.89. The learned Magistrate issued process against the petitioner for offences under Sections 406 and 420 of the Indian Penal Code by his order dated 29.12.89.

5.The petitioner has challenged the said order on the ground that no ingredients of any offence have been disclosed and there is enough evidence to show that the complaint is malafide, frivolous and vexatious and therefore, the petitioner has filed this petition for quashing the process issued by the learned Magistrate. It is contended before the court that the allegations made in the FIR clearly indicates that the case is of a civil nature for which no criminal complaint would lie and filing of the said complaint is nothing but abuse of

the process of law. It is further contended that the cheque was given for the settlement of the account, and the complainant was informed that the stop payment would be made. However, this itself would not give any rise to say that the petitioner has committed an offence under Section 406 and 420 of the Criminal Procedure Code. It is further stated that earlier the police asked for 'B' summary against the petitioner as the Investigating agency found that the said complaint was false, frivolous and malafide and only with a view to harass the petitioner, the same was filed. In that report submitted by the police it was found that as per the complainant and his witness themselves the amount of Rs. 4595/- for which the cheque dated 10.12.89 was issued was not pertaining to the amount due towards the goods but of the commission and the jute bags of Bajara and no amount was due towards the main goods. Thus, the complainant has suppressed the true facts and by misguiding the court has got the process issued which is nothing but a clear abuse of the process of law and, therefore, the process issued against the petitioner by making false representation and suppressing material facts by the complainant, is required to be quashed and set aside.

6.After having gone through the averments made in the

petition as well as after having gone through the contents of the complaint, this court is of the view that the dispute involved in the complaint is purely of a civil nature. Moreover, the amount involved is also very negligible and from the pleadings it cannot be said that there was any malafide intention on the part of the petitioner to commit an offence under Section 406 and 420 of the Criminal Procedure Code. Looking to the facts and circumstances of the present case, the court is of the view that the complaint filed by the respondent no. 1 deserves to be quashed and set aside and accordingly it is quashed.

7.The petition is accordingly allowed. Rule made absolute without any order as to costs.

(K.A. PUJ, J.)

Divya//